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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 202

AURORA VARGAS,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

Brief of Respondent in Opposition to Granting of Writ of Certiorari.

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Statement.

Petitioner's prosecution by the People of the State of California was the result of her use of force and violence upon the person of several Deputies of the Sheriff of the County of Los Angeles, California, while she was forcibly resisting the execution of a valid Writ of Possession issued by the Superior Court of the County of Los Angeles, California.

On February 20, 1953, an Interlocutory Judgment of Condemnation as to the property owned by Manuel and Avrana Arechiga was entered by the Superior Court of the State of California in and for the County of Los Angeles in the case of *Housing Authority of the City of Los Angeles v. Margarita Lopez, et al.*, Superior Court Case No. 586,229, which judgment became final

in accordance with the provisions of Judicial Council Rules on Appeal, Section 2 (a) on or about April 21, 1953. Said Interlocutory Judgment, in the usual form, condemned the property of the Arechigas in fee simple to the Housing Authority. Upon payment into court of the sum of $10,050, plus costs, for the benefit of the Arechigas, the Housing Authority, on March 17, 1953, procured the entry of a Final Order of Condemnation, recorded on March 19, 1953, in Book 41250, page 269, Official Records of the County Recorder of Los Angeles, California.[1]

On September 30, 1953, the Arechigas commenced an action, entitled an action "To Set Aside or Enjoin Enforcement of Judgment," and in said action alleged that the award ordered to be paid by the Interlocutory Judgment of Condemnation had been deposited with the County Clerk of the County of Los Angeles.[2]

After the City of Los Angeles acquired title to the property formerly owned by the Arechigas, it was joined as a defendant in this action, and a General Demurrer

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[1]Petitioner's Statement (Petition for Writ of Certiorari, p. 3) that the Housing Authority "applied to a court commissioner to issue a Final Order of Condemnation" is contrary to fact. The Final Order, recorded as mentioned above, was signed on March 17, 1953, by the Honorable Stanley N. Barnes, now Judge of the United States Court of Appeals, then presiding Judge of the Superior Court.

[2]As found by the District Court of Appeal of the State of California in *Arechiga v. Housing Authority*, 2nd Civil No. 24140, Opinion filed August 19, 1960, 183 A. C. A. ..., 353 P. 2d ..., the Arechigas have been aware of the deposit in Court and the Final Order of Condemnation since prior to September 30, 1953. By virtue of the allegations contained in their verified complaint in the earlier action, the Arechigas refuted the claim of petitioner concerning lack of knowledge of the deposit and Final Order, contained on pages 31 and 32 of the Petition for Writ of Certiorari.

to the Complaint having been sustained, judgment was entered in favor of all defendants. The plaintiffs therein appealed, and the judgment was affirmed in *Arechiga v. Housing Authority* (1958), 159 Cal. App. 2d 657, 324 P. 2d 973. This judgment confirmed title to the property in the City of Los Angeles.

Concurrently with the latter case, it was held in *Housing Authority v. Lopez* (1958), 159 Cal. App. 2d 661, 324 P. 2d 976, that the City of Los Angeles was entitled to the issuance of a Writ of Possession to enforce the judgment in condemnation.

Thereafter, a Writ of Possession was issued out of the Superior Court of the State of California in and for the County of Los Angeles, and executed upon the property. Thereafter, on May 21, 1959, the Arechigas again brought an action in the Superior Court seeking to set aside the judgment in condemnation and alleged every ground mentioned in petitioner's Petition for Writ of Certiorari in an attempt to establish the invalidity of said judgment. This is the case mentioned on pages 4 and 5 of the Petition for a Writ of Certiorari and is the case that was decided on August 19, 1960. In substance the case holds, as the Court states in the concluding paragraph of the opinion:

> "Since the attack of the appellants upon the judgment of the Final Order of Condemnation must fail, no claim of prejudicial error can be predicated upon the issuance of the Writ of Possession. That the City of Los Angeles was entitled to such a writ was determined in *Housing Authority v. Lopez*, 159 Cal. App. 2d 661."

The statements in the Petition for Writ of Certiorari beginning with the third paragraph of page 5 and end-

ing with the first paragraph of page 8 constitute an inaccurate and irresponsible account of the events that were at issue at the trial of the criminal action. Such statements as "By this time the blood was streaming down petitioner's mouth" (Petition p. 5, line 9) are refuted by the testimony of petitioner's own witness Patrick F. Michaels who stated that he saw a very small amount of stains on petitioner's lower lip that appeared to be blood, that he didn't know where it came from and that in petitioner's facial area there were no cuts or bruises whatsoever. [Rep. Tr. original p. 292, line 10, to p. 293, line 13.] Such is substantiated by People's Exhibit 2, a medical report.

It must be emphasized that the events at issue at the trial of the criminal action were the subject of rather intense public attention. The house in question was barricaded prior to the attempt to execute the Writ of Possession [Rep. Tr. original p. 281, line 14], and the television news reporters with their motion picture cameramen were there. And they were not there because of an alert sounded by any public agency of the City or County of Los Angeles. Even the attorney for petitioner was there. (Petition, p. 7, line 30.)

The performance was duly photographed and displayed to the People of Los Angeles via television. As shown by the transcript of the docket of the trial of the case, court convened August 11, 1959, at KTLA Television Studios and the films were viewed by the court and jury. While petitioner is now willing to exaggerate with utter abandon in her account of the transaction in question, on appeal she did not once urge that the evidence, including the motion picture depiction of the affair, was in any way insufficient to support her conviction.

I.

The Denial of the Purported Attempt to Impeach the Witness Cable Was Not a Denial of Due Process of Law.

Petitioner at page 23 of her Petition for Writ of Certiorari indicates the witness in question to be a prosecution witness. This is not true, the witness was a *defense* witness. [Rep. Tr., original p. 409, line 8, and Tr. of the Docket for August 13, 1959.] In fact, petitioner at page 19, line 7 of the Petition concedes Sgt. Cable was not called by the prosecution.

It is a California rule of evidence that generally, impeaching questions may not be asked of one's own witness. (*People v. Washburn* (1930), 104 Cal. App. 662, 286 Pac. 711; *People v. Vertrees* (1915), 169 Cal. 404, 146 Pac. 890.) To permit impeachment of one's own witness, three elements must exist: Damage to the party calling the witness; materiality of the evidence; and surprise at the witnesses present testimony. (*People v. Spinosa* (1953), 115 Cal. App. 2d 659, 252 P. 2d 409.) Petitioner urges no such elements.

The trial court in the instant case, as did the trial court in *Hickory v. United States*, 151 U. S. 303, 309, 38 L. Ed. 170, 174, merely exercised its discretion in declining to concede any relaxation of the rules that one may not impeach his own witness, and was, of course, properly upheld by the Appellate Department of the Superior Court.

II.

The California Courts Properly Refused Petitioner's Persistent Attempts to Exhume a Lost Civil Action and Retry It in a Criminal Case.

As stated, petitioner's prosecution was the result of her attack upon deputies of the Sheriff of the County of Los Angeles, California, while they were engaged in their duty of executing the process of the Superior Court of such county. Such duty is specifically created by Section 262.1 of the California Code of Civil Procedure which provides:

> "A sheriff or other ministerial officer is justified in the execution of, and shall execute, all process and orders regular on their face and issued by a competent authority, whatever may be the defect in the proceeding upon which they were issued."

As stated in *Vallindras v. Massachusetts, etc. Ins. Co.*, 42 Cal. 2d 149, 154, 265 P. 2d 908, as to the duty of the sheriff:

> "It is his duty to execute the orders of the court unless they are patently irregular and void."

Of course the Writ of Possession in question was not patently irregular or void. On the contrary it was obviously valid on its face in every respect. Beyond that, its validity in fact has been determined by the California Appellate Court in *Housing Authority v. Lopez*, 159 Cal. App. 2d 661, 324 P. 2d 976, and again recently in *Arechiga v. The Housing Authority of the City of Los Angeles, et al.*, 183 A. C. A. ..... 353 P. 2d ..... (District Court of Appeal, Second Appellate District, 2nd Civil No. 24140, August 19, 1960.)

To accept petitioner's argument on this point would do great violence to the principle that:

> "The law gives to a citizen a right of action against a sheriff for an unlawful exercise of his authority, but if a citizen attempts to decide for himself whether or not the sheriff is acting within the scope of his authority he does so at his peril. The law does not countenance a breach of the public peace in order to enforce a private right. Courts are created for the purpose of determining those rights, and any other rule would result in private battles going on at various times and places, to the great inconvenience of the general public. Such a rule is not to be accepted or approved."
>
> *People v. Spear*, 32 Cal. App. 2d 165, 169, 89 P. 2d 445.

III.

The Exclusion of Evidence of Purported Cruel and Unusual Treatment of Petitioner by the Arresting Officers Did Not Constitute a Denial of Due Process of Law.

Petitioner's complaint of unusual treatment by the arresting officers involves purported acts occurring *after* her arrest for battery upon such officers. [Rep. Tr., original p. 150, line 18.] Thus, such purported acts were irrelevant and immaterial to the issue of guilt of the petitioner. Admittedly, as was stated at the trial [Rep. Tr., original p. 151, line 14; p. 180, line 8] evidence of such acts would have been admissible to show bias and prejudice on the part of any witness who had purportedly committed them.

However, appellant did not identify any witness as having engaged in any purported act that was excluded from evidence. Moreover, all the acts complained of by appellant were not kept from the jury. On petitioner's cross-examination, she explained the "handcuffing with great force." [Rep. Tr., original p. 319, line 10] the "striking in the mouth." [Rep. Tr., original p. 319, line 25; all of p. 320] and the "rolling up of the window" incident. [Rep. Tr., original p. 326, line 19.] Apparently, the jury was not impressed by her version of what happened.

Without intending to condone the propriety of such purported conduct, had it occurred, or admitting that it did occur, it is apparent that the conduct described could not be punishment within the meaning of the 8th and 14th Amendments to the Constitution of the United States. (*Johnson v. Dye*, 175 F. 2d 250, cited by petitioner, and *Weems v. United States*, 217 U. S. 349, 54 L. Ed. 793.)

> "A multitude of cases indicate that, if the accused is brought personally before a court which has jurisdiction of the subject matter, he may be tried, convicted, sentenced and imprisoned. It makes no difference by what means, rightful or wrongful, his body was brought into court. . . ."
>
> *Ringer v. Municipal Court*, 175 Cal. App. 2d 786, 788, 346 P. 2d 881 and cases therein cited.

See also:

People v. Sergent, 183 A. C. A. 346, 353 P. 2d .....;

Frisbie v. Collins, 342 U. S. 519, 96 L. Ed. 541.

Conclusion.

The Petition for Writ of Certiorari does not disclose that there has been a violation of petitioner's rights under the Federal Constitution, nor does it show that the highest court of the State of California has decided a federal question in conflict with applicable decisions of this court, or decided a federal question of substance not theretofore determined by this court.

Respondent prays that the petition be denied.

Respectfully submitted,

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APPENDIX.

Stats. 1951, c. 655, P. 1847, Sec. 14 (Code Civ. Proc., Sec. 262.1.)

A sheriff or other ministerial officer is justified in the execution of, and shall execute, all process and order regular on their face and issued by competent authority, whatever may be the defect in the proceedings upon which they were issued.